

Olivia Y., Jamison J., et al. V. Phil Bryant, Donald Taylor, et al.

John Davis

November 29, 2018

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

OLIVIA Y., BY AND THROUGH HER NEXT
FRIEND, JAMES D. JOHNSON; JAMISON J.,
BY AND THROUGH HIS NEXT FRIEND,
CLARA LEWIS; DESIREE, RENEE, TYSON,
AND MONIQUE P., BY AND THROUGH THEIR
NEXT FRIEND, SYLVIA FORSTER; JOHN A.,
BY AND THROUGH HIS NEXT FRIEND,
JAMES D. JOHNSON; CODY B., BY AND
THROUGH HIS NEXT FRIEND, SHARON SCOTT;
MARY, TOM, MATTHEW, AND DANA W., BY AND
THROUGH THEIR NEXT FRIEND, ZELATRA W.;
AND SAM H., BY AND THROUGH HIS NEXT
FRIEND, YVETTE BULLOCK; ON THEIR OWN
BEHALF AND BEHALF OF ALL OTHERS SIMILARLY
SITUATED

PLAINTIFFS

v. CIVIL ACTION NO. 3:04-CV-251-TSL-FKB
PHIL BRYANT, AS GOVERNOR OF THE STATE OF
MISSISSIPPI; DONALD TAYLOR, AS EXECUTIVE
DIRECTOR OF THE DEPARTMENT OF HUMAN
SERVICES; AND BILLY MANGOLD, AS DIRECTOR
OF THE DIVISION OF FAMILY AND CHILDREN'S
SERVICES

DEFENDANTS

DEPOSITION OF JOHN DAVIS

Taken at the instance of the Plaintiffs at
Bradley, LLP 188 East Capitol Street, Suite 400
Jackson, Mississippi, on Thursday,
November 29, 2018, beginning at 9:01 a.m.

REPORTED BY:

GINGER H. BROOKS, CCR #1165
CRR, RPR, CRC, CCR, CLR, RSA

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1 JOHN DAVIS,
2 having been first duly sworn, was examined and
3 testified as follows:
4 EXAMINATION BY MS. LOWRY:

5 Q. Would you state your name for the
6 record, please?

7 A. My name is John Davis, D-A-V-I-S.

8 Q. Are you employed by the Department of
9 Human Services?

10 A. Yes.

11 Q. And what is your position?

12 A. I am currently the Executive Director of
13 the Mississippi Department of Human Services.

14 Q. And generally how long have you been in
15 that position?

16 A. This position, three years.

17 Q. And what position -- did you have a
18 position in state government before that?

19 A. I have been with the Department of Human
20 Services for 27 years.

21 Q. What generally are your responsibilities
22 with the Department of Human Services?

23 A. As executive director, my charge is to
24 ensure that the program areas of the agency as
25 well as the administrative functions are carried

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1 out. That is mandated through the state
2 Legislature, appointed by the Governor, confirmed
3 by the Senate. It is my charge to ensure that
4 those programs run efficiently and effectively.

5 Q. Are you aware of any historic verbal
6 agreement between MDHS and what's now called
7 MDCPS?

8 A. Verbal agreement?

9 Q. With regard to SSBG and TANF funding.

10 A. From a historical standpoint, those
11 funds, SSBG, and TANF funds, have been used to pay
12 for those services or those fund -- those cost
13 expenditures that meet those requirements for
14 those program areas, TANF, SSBG.

15 In other words, there are requirements
16 within each one of those programs to be met before
17 those dollars can be expended toward an expense.

18 Q. But it doesn't -- but does it
19 automatically then go to the program if they meet
20 the requirements, or do you have more programs
21 that meet the requirements than you have funding
22 for?

23 A. There's always more need than there is
24 funding in all areas of the agency.

25 Q. So is it within your discretion to

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1 decide where within the agency those funds go?
2 A. Within a certain -- within a certain
3 limit. For instance, SSBG, there is a maximum of
4 30 percent that can be transferred. TANF, based
5 on the needs of the TANF -- TANF program has to be
6 funded first, TANF work program.

7 Those areas of the program area that are
8 required to function must be funded prior to any
9 other funding or any other program being funded
10 through those dollars, but there is discretion in
11 some of those funds, yes.

12 Q. What -- can you tell me what the total
13 amount of funds for a particular year are that are
14 available under TANF?

15 A. For?

16 Q. For anything. What's the possible --

17 A. \$84 million.

18 Q. And what's the total pot with regard to
19 SSBG funding?

20 A. I can't remember the exact amount. I'm
21 sorry. I think it's 6 million, but I can verify
22 that. I don't know that to be exact.

23 Q. So you have discretion within those
24 limits to provide those funds within your agency;
25 is that right?

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1 A. Yes.

2 Q. Okay. Do you know how much MDHS
3 provided to MDCPS in TANF and SSBG funds in 2015?

4 MR. JONES: I assume you're referring to
5 fiscal year 2015?

6 MS. LOWRY: That's correct. Sorry, yes.

7 THE WITNESS: I'm sorry, I do not.

8 Q. (By Ms. Lowry) Okay. Let me take a look
9 and --

10 A. I mean, I wouldn't remember that.

11 (Exhibit 16 marked for identification.)

12 Q. (By Ms. Lowry) So I'd like to show you
13 a document, and it is from Takesha Darby to
14 Justice Dickinson, and it is dated September 15th,
15 2017. And I would like to ask if you have you
16 ever seen the document before?

17 A. Not that I'm aware of.

18 Q. Okay. So this document says that in
19 FY2015, CPS received 4,799,426 from SSBG and
20 25,507,616 in TANF funding from MDHS.

21 Does that seem right to you?

22 A. Probably so, because it would be around
23 the 30 million total I would think, yeah.

24 Q. Okay. And it also says that during '16,
25 CPS received 6,327,405 in funding from SSBG and

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1 24,884,746 in TANF funding from MDHS.

2 Does that seem accurate?

3 A. It's within the range, yes, ma'am.

4 Q. Okay. And during fiscal '17, it says
5 CPS received 12,300,702 in TANF funding from MDHS.

6 Does that number seem right to you?

7 A. Yes.

8 Q. Okay. What is your understanding as to
9 why less money was provided in '17 than in '16 for
10 the TANF funding?

11 A. If I remember correctly, it was because
12 CPS had began to budget on their own and did not
13 budget for any additional TANF dollars.

14 Q. And did they receive any additional TANF
15 dollars beyond the 24 million?

16 MR. JONES: For what?

17 THE WITNESS: In '16?

18 Q. (By Ms. Lowry) Yes, I'm talking just
19 about FY '16.

20 A. I don't remember exactly. I do remember
21 in 2017, there was additional funds given at the
22 end of the year because there was a shortfall. I
23 don't remember the exact total, though.

24 Q. Do you know approximately what the total
25 was?

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1 A. I want to say around \$13 million, but I
2 don't -- again, I'm not exactly sure.

3 Q. Okay. But around 13 million?

4 A. Yes, ma'am.

5 Q. Okay. Thank you very much.

6 And do you know how much money was
7 provided in fiscal year 2018?

8 A. I do not. Well, I know based on the
9 shortfall how -- and the deficit appropriation, it
10 was a total of around \$40 million.

11 Q. Was that just TANF money?

12 A. TANF money was about 30 -- when -- when
13 we -- I need to -- I need to -- I need to caveat
14 here and say TANF money cannot be transferred to
15 them. TANF dollars can be expended toward --
16 toward those expenses that meet the requirements
17 of TANF. So the block grant of TANF dollars that
18 come into the Department of Human Services cannot
19 just be arbitrarily block grant back out. The
20 services that we pay for have to meet one of those
21 four tenets of TANF.

22 When I'm saying this, I'm not saying we
23 just transferred \$30 million. I'm saying there
24 was expenditures that met the requirements that we
25 could use those dollars toward, if that makes

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1 sense.

2 Q. I think I understand, but let me just
3 ask you another question about it.

4 So do they -- does CPS actually bill DHS
5 and you pay it through TANF funds or is there some
6 fund set aside by you?

7 A. There was no mechanism back during these
8 years, because the agency had not been set up like
9 that. It was one -- if I remember correctly in
10 2017, that's why there was not as much TANF funds
11 transferred because they did not request those
12 expenditures to be matched through TANF dollars.

13 So once we knew that they were going to
14 have a shortfall, and we still had -- under the
15 state legislation had purview to go back in and
16 find those expenditures that would meet the TANF
17 requirements, we went back in, did so, moved the
18 money around so that the TANF dollars could hit
19 rather than the state dollars.

20 That's how come we made it up to the
21 \$30 million, if that makes sense. I'm sorry.

22 Q. It's complicated.

23 A. It is complicated. It's a budgeting
24 issue that most -- most funding -- most agencies
25 don't have to go through, because TANF funds are

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1 very specific, and I know that there was a big
2 deal made out of TANF funds, but TANF funds,
3 there's only -- that's one of the smaller grants
4 in that agency, so as long as those -- and the
5 reason it meets those criteria over on the child
6 protective services side is simply because there
7 is stabilization of the home.

8 That's -- so those social workers, their
9 salaries can be matched 50/50 because they're a
10 part of stabilizing the home. That's a tenant of
11 TANF.

12 Workforce -- workforce development is a
13 tenant of TANF. So if there's workforce
14 development within a program area, those funds can
15 be used toward that.

16 So that's kind of what we have to look
17 at in determining if TANF funds can be used.

18 Q. But -- so again, you have discretion
19 within that 84 million about how much you can send
20 to CPS if it meets the requirements of TANF?

21 A. Exactly. That is correct. That is
22 correct.

23 Q. Conceivably, you could give them 84 --
24 match 84 million?

25 A. I could do that, but then I would -- I

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1 would strip the TANF program. How do I operate a
2 TANF program with no money?

3 Q. Right. It might not be the wisest thing
4 to do, but it's possible to do?

5 A. Right. So as an executive director, as
6 any CEO has to make a determination, do you shut
7 down every program, or do you say one program is
8 more important than the other?

9 And, on this side of the house, on the
10 Department of Human Services side, TANF can be
11 used to stabilize the home so a child never comes
12 into foster care. So if -- if the TANF worker on
13 the DHS side is doing their job, a social worker
14 never has to deal with the family. Because they
15 can stabilize the home.

16 Education, medical care, transportation,
17 childcare, all of those different things that
18 could perhaps disrupt a home that would cause a
19 social worker to have to get involved can be
20 prevented prior to getting to CPS.

21 So if the more money I spend towards
22 stabilizing the home, the less need there is for a
23 social worker to be involved in the home.

24 Q. I understand that.

25 A. I'm sorry.

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1 Q. No, that's very helpful, and thank you
2 for that.

3 A. Yeah.

4 Q. But there is still discretion and
5 probably it would not be a good exercise in
6 discretion to put all your 84 million in CPS, but
7 it's legal to do so?

8 A. As an agency head, I have a lot of
9 discretion in a lot of different areas, but my
10 main charge is to make sure that that agency runs
11 at the most efficient level it can.

12 Q. Okay. You're aware that Jess Dickinson
13 is the Commissioner of MDCPS, correct?

14 A. Yes, ma'am.

15 Q. And at any time prior to the time he
16 took his position in, I believe it was September
17 of 2017, were you in any meetings with
18 Commissioner Dickinson?

19 A. I don't remember the exact date. It may
20 have been in September maybe. It was before -- it
21 was prior to Dr. Chandler -- Chandler leaving --
22 leaving his position. Justice Dickinson,
23 Dr. Chandler, and I met in Dr. Chandler's office.

24 Q. Okay. Was anybody else there?

25 A. Not to my recollection. I can't -- it's

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1 been a while, but I don't think so. I think it
2 was us three.

3 Q. Okay. Do you remember at that meeting
4 discussing TANF and SSBG funding for MDCPS?

5 A. I remember discussing the entirety of
6 the CPS and the separation, everything from
7 funding to the needs that would be coming, the
8 challenges that would lay ahead in legislation,
9 because we were preparing our Legislative liaisons
10 with some -- some bills that would be necessary to
11 correct some things that were not going well with
12 the transition.

13 And so I remember talking about a lot of
14 different things that day in reference to just
15 running the agency.

16 Q. And you made some reference to things
17 not running well with the -- with the transition.
18 Can you tell us what you were referring to?

19 A. Not running well in the sense that
20 legislation that was cross with the purpose of the
21 agency. For instance, there was legislation that
22 said when the agency separated, they were
23 separated in totality, therefore, I could not -- I
24 could not use TANF funds at all. There would have
25 be no way to use TANF dollars even to pay for

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1 those -- those costs that would be associated with
2 TANF eligible funds or TANF eligible expenditures,
3 so we had to get that corrected in order that
4 those TANF dollars could be used to pay for some
5 of those services in CPS or those eligible
6 services in CPS that we could fund.

7 Q. And you talked about that, and did you
8 reach a resolution on that?

9 A. No, we -- there was no resolution that
10 day. It was mainly just a meet and greet. I had
11 not met Justice Dickinson. Prior to that, to my
12 knowledge, I had never met him until that date.
13 And so Dr. Chandler had wanted to have that
14 meeting as the transition began so that I would
15 know who he was and we could get to know each
16 other.

17 Q. And do you -- did you make any
18 assurances to Commissioner Dickinson with regard
19 to TANF funding or SSBG funding?

20 A. I'm not sure if assurances -- I think
21 maybe probably perhaps -- if I know me well
22 enough, I would have said something to the effect
23 of we are going to be here to support you. Our
24 job is here to help during the transition. It
25 benefits us for the transition to go smoothly.

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1 The Department of Human Services has
2 every intention to support whatever we can within
3 the realm of the regulations and within the realm
4 of what we can do to make it successful.

5 I know I would say something like that,
6 yeah, yeah.

7 Q. And is it your recollection or your
8 thinking about it that you didn't say anything
9 more specific than that, understanding that what
10 you're saying is something that you think you
11 would have said, not something you precisely did
12 say?

13 A. Right. I know I would have assured him
14 that the agency was behind him.

15 Q. And that's basically what the message
16 was?

17 A. Yeah, absolutely. That was my charge.

18 Q. Did you see or speak to Justice Jess
19 Dickinson subsequent to that meeting?

20 A. I'm sure we've met. I don't remember
21 any -- I know that we had several -- we had one or
22 two staff meetings, but it seems like it was after
23 the letter was sent, and we were trying to
24 determine what -- how we could help as far as
25 funding and those kinds of things, so we met as a

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1 group to determine how we could help -- whatever
2 that meant, not just funding but how the
3 transition was going, but I don't remember
4 specific dates or anything like that. I'm sorry.

5 Q. And you said there was a larger meeting.
6 Who would have been at that meeting, if you
7 recall?

8 A. Individuals like Takesha Darby, my
9 finance folks, because you do -- during this time,
10 they were still under -- like, for instance, our
11 HR departments, our budgets and accounting
12 departments would have been still closely working
13 with -- with -- so, in other words, we were still
14 a team. It was not -- it was not completely
15 separated. So it would have been individuals
16 like -- if I remember correctly, the finance
17 departments, it would have been Justice Dickinson
18 and I, our chiefs of staff, maybe some more
19 deputies. I'm not sure exactly.

20 Q. And did that meeting happen just once?

21 A. Yes.

22 Q. And do you remember approximately when
23 it was?

24 A. It would have had to have been December,
25 January, I'm thinking.

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1 Q. And during that time, did you make any
2 specific assurances to Commissioner Dickinson with
3 regard to financing?

4 A. No, because I didn't know where the
5 money was going to come from. I just knew that it
6 was my charge to make sure -- you have to
7 understand, as a -- being in the agency for 27
8 years, I am not accustomed to ever seeing the
9 agency ask for deficit appropriation.

10 I've never seen that in the Department
11 of Human Services. So when that possibility came
12 up, it was -- it was a foreign concept to me
13 because my job was to stay within the budget,
14 whatever that means.

15 If it means I have to run vacancies, if
16 it means that I have to -- I have to -- from
17 program standpoints, I have to cut back on
18 contracts, whatever it means, I run within the
19 budget that the Legislature gives me, because
20 that's my charge.

21 And so when we were discussing things
22 like such a large amount that could potentially be
23 outstanding, that would concern me. I would
24 have -- but my answer would always be, but we'll
25 try to fix it, because that's who I am.

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1 Q. Uh-huh (affirmative response).

2 A. And so I'm -- probably that day I was
3 saying things like, look, we just need to fix it.
4 We've got to find a way to fix this, because we do
5 not want to go over to the Legislature and say
6 there's a -- we need a deficit appropriation.

7 They determined what the budget was. It
8 was not what we asked, but they gave us what they
9 determined we needed, and that's what I live
10 within as an agency head. Have for years.

11 Q. Okay. So you would not have said, I'm
12 going to give you X amount or Y amount or anything
13 like that?

14 A. I wouldn't have -- first of all, I
15 wouldn't have known the exact amount, because at
16 some level, it was -- if I remember correctly, it
17 was a -- a much larger amount than it came down to
18 at the end.

19 It seems like it was like 60, 70,
20 80 million. I'm just -- you know. And we got it
21 down to 30 -- 40, then 30, so it was like -- so I
22 wouldn't have known how much to tell them to
23 transfer.

24 I know what I would have told them that
25 we had, and we didn't have anything at that time,

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1 because everything had been allocated.

2 We were in the middle of a budget year.

3 You can't -- so I would -- I would have had to
4 stop contracts. I would have had to terminate
5 people, but even in the middle of a year, you
6 wouldn't have saved enough to have amounts of
7 money to give them, if that makes sense.

8 Q. Uh-huh (affirmative response).

9 A. So I would have been concerned that we
10 were in the middle of a year asking for a large
11 amount of money to be found, but that doesn't mean
12 it can't be fixed. It just means I would have
13 been concerned.

14 So I don't remember ever specifically
15 saying I'm going to transfer, you know,
16 \$50 million or -- you know.

17 Q. I want to show you a document previously
18 marked Exhibit 2.

19 A. Okay.

20 Q. And this is a letter to you from Jess
21 Dickinson, and it's dated December 15th, 2017.

22 A. Okay.

23 Q. And do you know this was apparently
24 after the meeting that was held; is that right?
25 This letter was written?

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1 A. I actually think this was prior to the
2 meeting. I think this may have been what
3 precipitated the meeting, because this was
4 December 15th, this was probably -- probably prior
5 to. Yes, I would say prior to.

6 Q. So this was prior to the meeting, and
7 this -- the meeting that took place was the
8 meeting that you literally referred to when you
9 had started talking about the meeting, that was
10 with a lot of staff people?

11 A. Right, right. You know, I can answer
12 this question.

13 Q. Go ahead.

14 A. It had to be -- this letter had to be
15 prior to the meeting, because I sent Justice
16 Dickinson an e-mail in response to this, and we
17 met, because if I remember correctly, I said, I'll
18 give you a -- I'll give you a formal answer to
19 this. And we met instead of me writing a letter,
20 because we needed to know more details about the
21 need.

22 Q. Okay.

23 A. So I'm thinking this had to be -- this
24 had to be prior to.

25 Q. Okay. So --

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1 MR. JONES: Just to clarify the record,
2 Counsel, I'm assuming you're talking about
3 the big meeting that he's just described with
4 multiple people as opposed to the very first
5 meeting?

6 MS. LOWRY: That's correct.

7 MR. JONES: That you just said in '18.

8 MS. LOWRY: That's correct.

9 Q. (By Ms. Lowry) In fact, at the end of
10 this letter -- thank you. Let me show you something
11 that has been -- Exhibit 8 and see if this helps to
12 refresh your recollection.

13 MR. JONES: Let me look at that just a
14 minute. Yes, all right.

15 THE WITNESS: Yes, this is in response
16 to this letter. Yes.

17 Q. (By Ms. Lowry) Okay. But this also
18 preceded the big meeting you were talking about?

19 A. Yes, ma'am.

20 Q. But there was only one meeting, is that
21 right, that you recall?

22 A. Yes, ma'am. I'm sure -- I'm sure staff
23 within the agency met. If you're talking about
24 me?

25 Q. I'm talking about you.

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1 A. Yes, yes.

2 Q. When did you first know through any
3 means that there was a shortfall at MDCPS?

4 A. Sometimes after the beginning of the new
5 fiscal year, there were, I think, maybe our
6 budgets person told me that it looked as though
7 they were running short, but I can't remember the
8 exact month.

9 It probably would have been October,
10 November and -- but not to the point of being
11 concerned, because we run short every month, I
12 mean, you know, based on -- based on the number of
13 employees we have, based on the number of
14 contracts that are out.

15 So we're always evolving as an agency to
16 ensure -- for instance, there's -- there's
17 divisions who maintain vacancy rates just so that
18 they can maintain funding to run the operations.

19 So -- but the -- the actual big -- I
20 guess the big event that would have alerted me to
21 this kind of shortfall would have been Justice
22 Dickinson's letter to me on the 15th.

23 Q. So you sort of knew vaguely about it
24 beforehand, but this December 15th letter really
25 let you know about it?

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1 A. In context, I'm always aware of the
2 agency needing funding, the agency as a whole, not
3 just CPS. I mean, because it's a big agency.

4 There's a lot of needs. There's a lot
5 of -- so budget folks usually don't alert me of
6 anything unless -- I mean, I get -- I get weekly
7 reports, monthly reports, those kinds of things,
8 but I don't ever consider that a problem until
9 they're telling me there's no other way to -- to
10 -- for fund -- to fund those areas.

11 So -- so when I received the letter from
12 Justice Dickinson, my -- if I remember correctly,
13 because you can tell by my e-mail, I'm like, well,
14 wait a minute, we have a budget, and I live within
15 a budget, and if you're needing that kind of
16 money, we would really have to -- we'd really need
17 to look at that because your budget requests --
18 excuse me, not his, maybe Takesha's -- this budget
19 request if I remember correctly did not request
20 any TANF money.

21 So I allocated TANF money based on --
22 you know, I did not have anything to do with their
23 budget preparation that year. The year prior to,
24 I did, but that year I did not because that was
25 when we were doing the separation, and so Takesha

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1 and that group were doing their own budget.

2 Now, our budget folks would have seen
3 that, and even during the Legislative session, I
4 did not -- I did not -- I did not present the
5 budget for CPS that year. I was in there, but
6 Dr. Chandler presented that budget.

7 MR. JONES: Just so the record is clear,
8 would you mind if the witness clarifies he's
9 speaking about the fiscal year '18.

10 THE WITNESS: I'm sorry, yes.

11 MS. LOWRY: Sure.

12 MR. JONES: Because we've bounced around
13 a lot. And that's the budget for the period
14 that began 7/1/17, correct?

15 THE WITNESS: Correct.

16 Q. (By Mr. Jones) And would have ended
17 6/30/18.

18 A. For fiscal year, '18 yes. So, yes. I'm
19 sorry.

20 Q. So until the December 15th letter, you
21 had no idea that there were serious budget issues
22 in MDCPS?

23 A. Not to the extent he was asking for
24 29 million in TANF and -- excuse me -- yes, almost
25 30 million that he was asking for, I did not

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1 realize there was that big of a shortfall.

2 Q. Okay. Again, that was in December, and
3 then the meeting happened subsequently to that; is
4 that right?

5 A. Right, right.

6 Q. Approximately a week, two weeks, three
7 weeks? Any idea roughly?

8 A. I'm sorry, I do not know. I do not
9 know.

10 Q. And then you had the meeting instead of
11 sending him another letter?

12 A. Yes, ma'am.

13 Q. Okay.

14 A. It seemed the right thing to do. A
15 letter wouldn't have -- because I didn't know how
16 to address that.

17 Q. And then did you take any additional
18 action after the meeting with regards to funding
19 for CPS?

20 A. Absolutely.

21 Q. And what did you do?

22 A. Our staff started working together to
23 try to identify those -- those things -- those
24 things that would be needed. We had -- we had --
25 the Legislature would have come back in session in

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1 January, so we would have been called to -- to --
2 to the chair's office or either to a hearing on
3 our budget request, and so they would continue to
4 work -- they would have continued to work
5 together, and ultimately, the resolution was is
6 because the agencies had not been totally
7 separated out, the legislation to separate out
8 totally would have been for June of that -- that
9 following year, the June of the following December
10 that this letter is written.

11 Q. June of '18?

12 A. Yeah, June of '18. So we could,
13 therefore, go back and find those expenditures
14 that met the TANF requirements and use TANF
15 dollars to plug those holes so that they wouldn't
16 be -- there wouldn't be as big a shortfall. And
17 so we did, and we did that, and I canceled
18 contracts on the TANF side that were in place,
19 things like Boys and Girls, things like Families
20 First.

21 Things like -- we pulled back a huge
22 amount of dollars to -- from contracts that were
23 meant to -- for preventive services, we had to
24 pull back those dollars to fund the CPS shortfall,
25 and which I did.

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1 The problem was, we were January into
2 it, so six months into fiscal year, you can't --
3 it would take -- you have to move a mountain to
4 save that kind of money, to find that kind of
5 money to -- to do that. It was already allocated,
6 you know.

7 Q. And so what did you wind up providing to
8 CPS for the rest of that year?

9 A. Well, they found expenditures, I think,
10 up to 30, \$31 million that could be -- TANF
11 dollars could be used to pay for those
12 expenditures, and then work with the Legislature
13 to -- to find the additional 11 million that was
14 needed to plug the shortfall that was necessary in
15 CPS.

16 MR. JONES: And so that I don't
17 interrupt you unnecessarily, let me just add
18 an objection to the form to the extent your
19 questions suggest there is a transfer. He
20 has explained it's a payment of expenses but
21 not a transfer of funds.

22 MS. LOWRY: Understood, but thank you.

23 MR. JONES: Just wait for a question.

24 MS. LOWRY: One of the things he says --
25 Commissioner Dickinson says in Exhibit 2, the

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1 December 15th letter, is that -- on the
2 second page, "This will prevent us from
3 compliance with numerous" --

4 A. I'm sorry.

5 Q. -- "inquiring into Federal Court order
6 in the Olivia Y. litigation."

7 Did you at the subsequent meeting, the
8 meeting subsequent to this letter, discuss what
9 kinds of issues, what kinds of requirements that
10 CPS would not be able to comply with in the Olivia
11 Y. litigation?

12 A. I don't remember specifics about that
13 particular question. Oh, no, I don't remember
14 specifics.

15 Q. But you do recall it started in, what,
16 around January, you were able to provide
17 approximately 30 million, you said in TANF
18 funding?

19 A. It wasn't -- it wasn't just in January.
20 We had to work the remainder of that year to do
21 that, because those dollars were already allocated
22 to other program areas, so they had to be -- we
23 had to defund program areas -- other program --
24 like, for instance, the TANF program, the TANF
25 work program, employment training program,

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1 community services, those programs had to be
2 defunded so we could find the dollars available.

3 So we had to send out notifications to
4 contractors and those kinds of things to defund to
5 have those dollars available, so it was -- it
6 was -- it took several months. It took January
7 through -- probably through the end of the fiscal
8 year, state fiscal year to get that done.

9 Q. And so were you able to fund the TANF
10 dollars retroactively of services that had already
11 been provided?

12 A. It's not like that. TANF dollars --
13 during a fiscal year, dollars can be allocated
14 or -- for expenditures that meet the requirements.

15 During that fiscal year, we have the
16 ability to move those dollars around or those
17 funds around to meet the needs.

18 So it's not necessarily funding
19 retroactive services, as much as it is funding
20 eligible services that we were not in tune to
21 until we were -- it was brought to our attention
22 they needed them.

23 For instance, like salaries of
24 employees. Well, that's not retroactive payment.
25 It's just going back and cost allocating to the

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1 appropriate funding source.

2 Q. Characterizing?

3 A. Yes, yes, so it's not --

4 Q. So you were able basically to fund
5 things that had happened earlier in the fiscal
6 year by that kind of arrangement?

7 A. As long as it's in that fiscal year yes,
8 yes.

9 Q. Yes. All right.

10 MR. JONES: And, again, this is more for
11 form than anything else. I would like to
12 note an objection that the fiscal year was
13 not over in his answer or your question
14 implies that they were going back and
15 resolving fiscal year expenses that have been
16 completed.

17 MS. LOWRY: I didn't understand it that
18 way, but that's fine.

19 Q. (By Ms. Lowry) So as I understand it --
20 I would like to call your attention now to
21 Exhibit 9.

22 A. Okay. I just need to organize them.

23 Q. Would you please take a look at
24 paragraphs, and this is the -- an affidavit from
25 Jess Dickinson, and I'd like to call your

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1 attention specifically to paragraph 26?

2 A. Okay.

3 Q. And that paragraph says, "Working with
4 MDHS finance staff, we concluded that if the
5 \$12 million deficit appropriation could be
6 obtained from the Legislature, MDHS could leverage
7 those state funds to provide 44 million to apply
8 toward the MDCPS deficit," and he goes on to add
9 another sentence.

10 But is that a correct characterization
11 about what happened with regard to MDHS?

12 A. Yes. The -- sounds like I've got my
13 numbers a million or two off, but yes, it -- but
14 the 44 million was the total amount, not
15 12 million in addition to the 44, if I remember
16 correctly, but the statement overall is correct,
17 yes. (Examining.) Yes.

18 Q. So this was for fiscal year -- it's
19 called fiscal year '18, which actually started in
20 '17.

21 What happened with regard to TANF and
22 SSBG money for fiscal year '19? How much money
23 were you able to -- was MD -- MDHS able to provide
24 or expenses that we were able to cover for MDCPS?

25 MR. JONES: Again, I'll simply object to

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1 form, because it implies fiscal year '19 is
2 over, and it does not complete until 6/30 of
3 2019.

4 MS. LOWRY: Thank you.

5 THE WITNESS: We have committed -- in
6 the agreement, we've committed to finding
7 expenditures that would meet the criteria of
8 TANF and fund up to \$30 million, the same
9 amount that we did to cover the last year,
10 the last fiscal year.

11 But this fiscal year is not over, and I
12 have been trying to watch that, but we won't
13 know until we get to a point where I'm asked
14 for additional or maybe not as much. I don't
15 know.

16 I would assume more would be needed.
17 But too, for '19, the Governor has requested
18 additional funding in his budget, as has
19 Justice Dickinson so --

20 MR. JONES: I think you were speaking
21 about fiscal year 2020, were you not?

22 MS. LOWRY: No, I think it was '19.

23 THE WITNESS: Hold on just a minute.
24 So, we're in '19. I'm moving to '20. I get
25 confused sometimes because we're going back

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1 in fiscal years when I'm two years ahead, and
2 I'm thinking the current budget that was
3 submitted, there were additional funds
4 requested from both the Governor and Justice
5 Dickinson.

6 For '19, we committed the 30 million.
7 We have not completed '19, and we will -- and
8 we will see what they need. I mean, if
9 there's a way I can help, I will.

10 MS. LOWRY: Let me show you -- this is
11 Exhibit 6, and on the second page of
12 Exhibit 6, it says --

13 MR. JONES: Is this Appropriation Bill
14 1600?

15 MS. LOWRY: I'm sorry?

16 MR. JONES: Is this Appropriation Bill
17 1600?

18 MS. LOWRY: That's correct.

19 THE WITNESS: Okay.

20 Q. (By Mr. Jones) And Section 4 says, "Of
21 the funds appropriated under the provisions of
22 Section 1 of this act and authorized for expenditure
23 under the provisions of Section 2 of this act, not
24 more than the amounts set forth below shall be
25 expended; however, notwithstanding any other

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1 provision in this act, it is the intent of the
2 Legislature that any amount of funds and positions
3 may be transferred between the Department of Human
4 Services and the Department of Child Protection
5 Services in order to comply with agreements made by
6 the State of Mississippi with the United States
7 District Court in reference to the Olivia Y., et
8 al., lawsuit."

9 A. Uh-huh (affirmative response).

10 Q. Are you familiar with this provision?

11 A. I remember it vaguely, because I was
12 part of the legislation, but I have not seen it
13 until you just brought it up.

14 Q. Okay. What is your interpretation of
15 this provision?

16 A. We were -- this came up with the chairs
17 because it was important -- the Legislature
18 thought it was important to try to find
19 efficiencies within both agencies, even though we
20 were going to be separated out.

21 They wanted us to have common HR
22 functions, they wanted us to have common financial
23 functions. They wanted us to have -- so anything
24 that could overlap or -- and/or be transferred
25 between the departments, I think their intention

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1 was for us to do that.

2 There's not a -- it was not mandated,
3 but they didn't say "shall" or "will" or "can't,"
4 "must," or all that. I remember having
5 conversations with this, because one of the things
6 that we've run into in the Department of Human
7 Services is the positions that they're talking
8 about are specific to the state personnel board,
9 specific to the job classifications and criteria.

10 So I can transfer an eligibility worker
11 to Justice Dickinson, but it wouldn't help him
12 meet the requirements of having a master's-level
13 social worker handle a case, or I could transfer a
14 case manager from TANF -- the TANF work program,
15 but it would not meet -- and if there's no funding
16 from neither the state or the fed- -- federal
17 government, or I don't have enough state dollars
18 to meet the match for the federal dollars, then
19 the positions are just -- like I say, I'm running
20 at probably a 1500 vacancy rate now in the other
21 departments at that agency just to keep up,
22 because I don't have enough state dollars to match
23 the federal dollars.

24 Q. What is your overall budget?

25 A. In my department?

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1 Q. In the Department of Human Services?

2 A. 69 -- \$69 million, state dollars.

3 Q. What -- you have other dollars that are
4 brought in through matches, right?

5 A. I'm sorry, it's -- I can't answer that
6 totally, because I would have to -- there's a
7 caveat here. I have spending authority for about
8 \$3 billion, 3 billion, 3 billion is the total for
9 all of the agency plus CPS, and that's because
10 SNAP dollars, there's about a billion dollars a
11 year issued in SNAP dollars. Those are dollars --
12 those are federal dollars that I don't have access
13 to, we just issue them.

14 But, I have spending authority to spend
15 them, to pull that down, to spend those dollars.
16 So I don't get a billion dollars from the federal
17 government. We just authorize those benefits to
18 those individuals.

19 Other things -- other areas like
20 childcare. Childcare, there's a \$90 million block
21 grant, just like on the TANF side, there's a
22 childcare block grant, CCBGB. And so that block
23 grant, I have \$90 million allocated to spend
24 toward that. In each division, there's a
25 different amount, and then based on funding year

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1 and funding sources and need, for instance, on the
2 SNAP side, I can spend a billion or I may spend
3 700 million, depends on -- but I don't have those
4 extra dollars to spend anywhere else.

5 Q. No, I understand that. But your overall
6 budget is around 3 billion?

7 A. For CPS and DHS.

8 Q. Including CPS?

9 A. Yes.

10 Q. Okay. And did -- when Commissioner
11 Dickinson was having the conversation with you at
12 the meeting in which both MDCPS and DHS staff
13 gathered, was he talking about what consequences
14 the failure to make all -- make the fund -- all
15 the funds that he needed available were
16 consequences that would help with the Olivia Y.
17 lawsuit?

18 A. I think -- I don't remember
19 specifically, but I think that we always are
20 concerned about making sure that we meet any kind
21 of federal requirements, whether it be through
22 lawsuit or regulation.

23 To answer your question, yes, I'm sure
24 we have all talked about how do we ensure we meet
25 all requirements from all different areas.

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1 Q. And was it your impression that we --
2 MR. JONES: And let me just make a
3 statement for the record that will be
4 continuing. To the extent you're testifying
5 about a specific --

6 MS. LOWRY: I would like to object to
7 Counsel's continuing interruptions of these
8 questions. You will have an opportunity to
9 question him yourself. And if you have
10 statements, you can talk to him and ask him
11 about it. I'd like you to let me continue
12 with my inquiry.

13 MR. JONES: State my objection. My
14 objection is the witness is testifying to
15 things he thinks may have occurred, and your
16 follow-up questions are stated as if he
17 testified that specific subject and testimony
18 took place.

19 MS. LOWRY: Fine.

20 MR. JONES: And that's my objection.

21 MS. LOWRY: Thank you, and let me
22 continue.

23 (Record read.)

24 MS. LOWRY: So that was my question, I
25 think, and if you could answer that.

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1 A. I think what I was saying was we're
2 always concerned about making sure we meet all
3 federal requirements.

4 Q. (By Ms. Lowry) Okay. And did he tell
5 you that explicitly he was planning to -- he was
6 planning to not comply with the caseload
7 requirements of the second -- of the stipulated
8 third remedial order and the MSA?

9 A. I don't remember that kind of specific
10 information.

11 Q. Okay. So he didn't tell you that he was
12 going to impose a hiring freeze on the agency; is
13 that right?

14 A. Oh, he didn't tell me specifically, but
15 I know I was sitting in a Legislative hearing that
16 he mentioned that would be one of the things he
17 would have to do. But I -- you know, I remember
18 that.

19 Q. Okay. Did you have discretion to tell
20 him what he could do and what he couldn't do if
21 you helped him out with the extra TANF funding?

22 A. No, we're not -- I'm not in the business
23 to tell him how to run his agency.

24 Q. Did the fact that he was planning to not
25 comply with the caseload provisions of the

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1 settlement agreement, trouble you when you heard
2 it?

3 A. I honestly don't really -- I can't have
4 an opinion on that kind of thing, because that's
5 his agency. That's not mine.

6 Q. Right. So it was his responsibility
7 that he decided that?

8 MR. JONES: And I'm going to have a
9 continuing objection. There's been no
10 testimony that he intended to intentionally
11 not comply with -- with any STRO or second
12 MSA requirements.

13 MS. LOWRY: Okay. Thank you.

14 Q. (By Ms. Lowry) Where are we -- you just
15 answered. Let's see. So you don't have an
16 opinion on that. That was your answer. Thank
17 you.

18 A. Because I don't know what his intention
19 was.

20 Q. Understood. Thank you.

21 MS. LOWRY: Thank you. We would like to
22 take a short break.

23 (A short break was taken.)

24 Q. (By Ms. Lowry) During the meeting -- the
25 first meeting that you had with Commissioner

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1 Dickinson, which you characterized as a meet and
2 greet, in Exhibit 2, Commissioner Dickinson says
3 that, in the first paragraph, Dr. Chandler -- part
4 of the sentence, "Dr. Chandler explained to me the
5 important role of the federal Social Security block
6 grant, SSBG, and temporary assistance to needy
7 families, TANF funds, both of which traditionally
8 have contributed to the functions of this agency."

9 Now, my question then, "Dr. Chandler
10 assured me that the availability of funds to meet
11 our budgetary requirements would not be a problem,
12 and you graciously indicated that you would take
13 care of this agency because of your strong
14 commitment to child protection."

15 I thought it was your testimony that at
16 that meeting, you explained there would be no TANF
17 funds available. So I just want to try to reconcile
18 these two statements.

19 A. I'm sorry, but no, I didn't -- if I
20 remember correctly, I said that I didn't remember
21 specifics. I remembered it being -- we talked
22 about the agencies as a whole. My desire to help,
23 commitment to help, whatever I could do within the
24 boundaries that I could.

25 If there were -- if there were

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1 expenditures that were TANF eligible, but at that
2 point, you have to remember -- I'm thinking here
3 that that was not -- the TANF funds were not
4 budgeted in their budget, so I would not -- I mean
5 I would not -- we would have not talked about TANF
6 funds a whole -- a whole lot I wouldn't think.

7 I would have -- if -- if he were to --
8 if he were to ask me -- if Dr. Chandler said that,
9 again, I don't remember specifically what he was
10 said -- what he said, I would have said something
11 to the effect of, I'm committed to helping your
12 agency be as successful as it can, because your
13 agency's success is my agency's success.

14 And so, but I don't know that we would
15 have gotten into saying there's X number of TANF
16 dollars or no TANF dollars. I don't think I would
17 have gotten into talking about that at that point.

18 Q. Understood. Okay.

19 And so at that meeting, do you have a
20 recollection of Dr. Chandler assuring Jess
21 Dickinson about the availability of funds to meet
22 our budgetary requirements?

23 A. I have a recollection of Dr. Chandler --
24 meeting with Dr. Chandler multiple times over the
25 time that I spent with him, always -- would always

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1 tell me, John, you're going to take care of us.
2 There's always plenty of money. You've got plenty
3 of money. You're going to take care of us.
4 That's Dr. Chandler.

5 He would have said that to me -- he's
6 said that to me multiple, multiple times, and that
7 was just how he functioned. He was not -- he was
8 not honed in -- he was not specific in the budget
9 area.

10 He would just assume that -- he would
11 have assumed, as he always did when I met with
12 him, that we were just going to take care of them,
13 no matter what that meant.

14 Now, we would never talk specifics about
15 I'm going to give you 30 million or 10 million or
16 5 million. That's not how he talked. John, you
17 take care of us now. I've got these things --
18 I've got an agency to run, you take care of us on
19 the financial side and let me know if there's a
20 problem.

21 So we had budget people that were
22 supposed to tell him if there was a problem and
23 tell me if there was a problem.

24 Q. So there was no discussion then that you
25 recall about specific amounts of money or about

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1 the availability of TANF or about the availability
2 of the SSBG?

3 A. As I recall, no specific amounts were
4 discussed.

5 Q. Well, was the availability of the TANF
6 funds discussed, because I think you testified
7 that the -- maybe I misunderstood you, that there
8 would have been no way to use TANF funds at all.
9 I'm just looking at your --

10 A. Oh, based on the legislation.

11 Q. Yes.

12 A. The legislation said that once
13 separation occurred -- it had not occurred at that
14 point, so I would have not -- separate -- we were
15 going through transition, separation. Separation
16 in totality would not have occurred until July of
17 '18.

18 This would have been in '17, so that's
19 how we were able to go back and plug in those TANF
20 dollars for that budget year, for that fiscal year
21 because it had not been separated. Had it been
22 separated based on the state legislation, had we
23 not corrected that legislation, I could not have
24 helped them with any TANF expenditure, any dollars
25 from TANF.

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1 Because the State would have no longer
2 been -- it would have been as -- I can't give TANF
3 money to vocational rehab services, I can't give
4 TANF dollars to Medicaid -- I can't, because
5 there's no tie. The tie here was child protection
6 services remained in but not of.

7 So they were part of the agency;
8 therefore, I could allocate TANF dollars for their
9 budget, so there's the difference.

10 Q. I see. So, but at that point, when you
11 had that meet-and-greet meeting, you had nothing
12 in your budget in TANF to give CPS because you
13 weren't anticipating doing that.

14 A. Right.

15 Q. You were then able to go back and do it
16 for that same fiscal year; is that right?

17 A. By -- by defunding other things that we
18 had allocated the funds for, that's correct.

19 Q. Okay. So it wasn't that you couldn't
20 have done it then, you just hadn't done it because
21 you hadn't been asked; is that right?

22 A. At the time that budget was prepared
23 prior to Justice Dickinson getting there, they had
24 not requested any TANF dollars, if I remember
25 correctly. I don't have the budget in front of

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1 me.

2 I may have, but I don't remember them --
3 as I -- I know they didn't, because this was --
4 this was a sticking point because we had to go
5 back and say, well, you don't ask for any TANF
6 funds.

7 That wasn't Justice Dickinson. That was
8 the individuals that prepared the budget on their
9 own prior to Justice Dickinson getting there.
10 So -- but I remember there not being any TANF
11 funds requested in their budget.

12 Q. Okay. And that's what you were trying
13 to correct?

14 A. That's how I budget. Yes. I budget
15 based on -- I budgeted based on their budget.

16 Q. Okay. I think that's helpful. You said
17 that you could use -- what did you call it, a stay
18 at home kinds of -- preventive workers, which
19 support a family staying together. You could, in
20 fact, put TANF money into that?

21 A. One of the tenets of TANF is stable --
22 the money can be used toward stabilizing homes to
23 keep those families together, so yes, I could use
24 funds -- that's why there are certain social
25 workers that I can pay or allocate 50 percent of

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1 their salaries with those TANF dollars because
2 they are in prevention services. They're keeping
3 families together, yeah.

4 Q. Okay. Have you maxed out for fiscal --
5 fiscal '19 the amount of -- number of preventive
6 workers for whom you could pay part salaries?

7 A. That's -- I can't -- I can't really
8 answer that question, because I'm not -- I don't
9 keep -- I don't keep track of the number of staff
10 that he had -- Justice Dickinson has, but I will
11 tell you this just from a historical perspective,
12 with the number of individuals they have coming
13 in -- the retention rate -- the turnover rate I
14 should say -- the turnover rate is such that it's
15 a moving target.

16 I mean if -- you could hire a hundred
17 social workers today and have 200 leave next
18 month. So my allocation is based on what his
19 needs are, and so when you say have you maxed out,
20 I don't know -- I don't know that he's max -- I'm
21 sorry, I'm probably being confusing, but I don't
22 know how to answer that question.

23 Q. Okay. Are you capped on the number of
24 preventive workers for whom you could contribute
25 TANF funds?

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1 A. I am based on other requirements of that
2 TANF program. So there's "X" number of dollars I
3 can expend toward prevention services or
4 prevention workers and still meet the needs for
5 the TANF program, itself. I mean, we can't
6 totally neglect the TANF program to support
7 prevention services.

8 Q. Okay. And have you reached that point?

9 A. As far as there are no TANF funds from
10 any fiscal year except current year, and we are
11 running right now -- we are running right now --
12 there are no additional TANF dollars. I can
13 answer that.

14 There are no additional TANF dollars to
15 be allocated, because they're all allocated. As a
16 matter of fact, we are concerned -- there's a lack
17 of TANF dollars now, because we have committed all
18 of those dollars to child protection services for
19 their expenditures. There's no additional dollars
20 now for preventive services.

21 So I've had to cut contracts in
22 prevention services like Families First, Boys and
23 Girls, all these prevention services I'm having to
24 cut so I can meet my obligation to meet the
25 expenditures that we've committed to CPS.

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1 MR. JONES: Again, you're referring to
2 fiscal year '19.

3 THE WITNESS: '19, I'm sorry, yes.

4 We're still in the middle of it. We're
5 working through it.

6 Q. (By Ms. Lowry) With regard to Section 4
7 of Exhibit 6, which is the House Bill number 1600,
8 have you had any conversations or are you aware of
9 any of your staff having any conversations with
10 MDCPS with regard to what else can be done to follow
11 the intent of the Legislature to comply with the
12 agreements in Olivia Y. going forward?

13 A. I have not had any specific
14 conversations, because that was not -- that's not
15 my wheelhouse, but I know that our budget staff, I
16 know and -- have had to have discussions, because
17 that's what they do every day, complying with this
18 legislation, so I would assume that they meet
19 regularly to discuss the budget.

20 Q. But you don't know specifically?

21 A. No, ma'am. Well, no, I don't know
22 specifically.

23 Q. Let me ask you a question about
24 Exhibit 2.

25 A. Okay.

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1 Q. And that's the letter from Jess
2 Dickinson.

3 Do you recall the phone conversation
4 that he refers to in the third paragraph of this
5 letter, "Earlier this week, I again contacted you
6 regarding these funds," et cetera?

7 Do you recall that phone conversation?

8 A. No, ma'am, not specifically. I -- I do
9 not, but I don't deny it. I just don't remember
10 it.

11 Q. Understood. Understood.

12 MS. LOWRY: I have no further
13 questions -- but let's mark another exhibit.

14 (Exhibit 17 marked for identification.)

15 Q. (By Ms. Lowry) All right. All right.
16 Toward the bottom of this -- do you want to read it
17 first?

18 A. (Examining.) Go ahead. I'm sorry.

19 Q. So at the paragraph at the bottom of the
20 first page?

21 A. Yes, ma'am.

22 Q. It says, "Dickinson told lawmakers
23 during a phone call that month" -- and that month
24 appears to be September --

25 A. Okay.

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1 Q. -- "with John Davis, Director of
2 Department of Human Services, Dickinson was
3 shocked to hear that the Department would receive
4 nearly 130 million less in federal funds than
5 estimated."

6 Do you recall having a conversation in
7 September with Justice Dickinson about the fact
8 that there -- that this was the case?

9 A. Well, I do not because -- and the number
10 is -- the number is just really off, because that
11 130 million, that would have been more than their
12 entire budget.

13 So when -- so I'm -- I'm not disputing
14 what he said. I am just not sure what that means.
15 The Department would receive nearly 130 million
16 less in federal funds?

17 Q. That's what it says.

18 A. The only thing I can think of is on the
19 budget. I remember the budget -- I think that may
20 be what he was referring to, because on the
21 budget, there was -- there was authorization to
22 spend additional 4E dollars that they didn't have
23 access to but it was -- it was -- it was noted on
24 the budget they were given spending authority to
25 spend it, but it wasn't real money. So I don't

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1 remember specifically -- I don't remember that.

2 Q. But you don't remember the conversation
3 at all, or do you?

4 A. I don't, no.

5 Q. Okay.

6 A. (Examining.)

7 MS. LOWRY: I have no further questions
8 at this point.

9 EXAMINATION BY MR. JONES:

10 Q. Mr. Davis, I'm Larry Jones. I represent
11 the defendants in this case as co-counsel. I
12 would like to ask you a few questions.

13 First things first, Exhibit 17 is a
14 newspaper -- it's an article, is it not?

15 A. Yes.

16 Q. In some media form, whether it's on the
17 Internet or in printed form?

18 A. Right.

19 Q. So it's not a transcript of any meeting?

20 A. No.

21 Q. You have no specific recollection of the
22 subject matter in the paragraph that counsel
23 referred you to?

24 A. I do not.

25 Q. And, as a practical matter, you don't

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1 believe that's correct because that amount is
2 larger than what?

3 A. It can -- it could be correct if
4 they're -- if it's false numbers, because that --
5 that would have been more than their budget.

6 Q. Okay. Let me turn to something else and
7 see if I can just put this in historical
8 perspective.

9 You're aware of the time period when
10 David Chandler became commissioner of CPS, are you
11 not?

12 A. I am.

13 Q. Is that 2015?

14 A. Right.

15 Q. And then in April of 2016, the
16 Legislature passed a statute which provided for
17 the complete separation of CPS from DHS with an
18 effective date of July 1st, 2018?

19 A. That's correct.

20 Q. The transition period then began for
21 that ultimate separation at some point after the
22 legislation was passed?

23 A. Immediately, yeah.

24 Q. Immediately after.

25 And at the time the legislation was

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1 passed, obviously, Commissioner Chandler was
2 commissioner of CPS?

3 A. That's correct.

4 Q. CPS was part of DHS?

5 A. Correct.

6 Q. In fact, CPS remained a part of DHS
7 during the entire period and is still a part of
8 DHS?

9 A. In but not of.

10 Q. Yes. And I understand what that means,
11 but it is under the umbrella of DHS with
12 independent operational authority?

13 A. That's correct.

14 Q. That's your understanding as well?

15 A. My understanding.

16 Q. All right. The point I was trying to
17 make, poorly, perhaps, is that the -- the complete
18 separation never occurred?

19 A. No, it hasn't.

20 Q. All right. Now --

21 A. It could not. Sorry.

22 Q. And I'm going to get to that, I hope.

23 So we're now moving forward from April of 2016,
24 and the beginning, at some point, of the ultimate
25 transition of a complete separation which never

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1 occurred.

2 And during that point, during that
3 period of time, there was, in fact, the budgeting
4 process for 2018, was there not?

5 A. Yes.

6 Q. And the budget was submitted for fiscal
7 year 2018 by former commissioner David Chandler's
8 team, was it not?

9 A. That's correct.

10 Q. And the appropriation was granted during
11 the period David Chandler's team was in place in
12 the commission --

13 A. That's correct.

14 Q. -- I mean in the department?

15 And we know that Justice Dickinson did
16 not become commissioner until September 18th of
17 2017.

18 A. I remember it being September, yes.

19 Q. Okay. And you've discussed a -- I'm
20 going to say a meeting before September 18th of
21 2017, as a meet and greet with Justice Dickinson?

22 A. That's correct.

23 Q. This was the first time you had met him?

24 A. That's correct.

25 Q. There were only three people there:

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1 You, Dickinson, and David Chandler?

2 A. That's correct.

3 Q. And your testimony today is you did not
4 recall any specific testimony about precise
5 amounts of TANF funding that would be available?

6 A. I do not.

7 Q. Now, as we move forward, a potential
8 shortfall of funds of a very significant amount
9 ultimately was discovered?

10 A. That's correct.

11 Q. And, in fact, the initial discovery of
12 that potential shortfall, and sometimes we've
13 described it as a "financial crisis," occurred as
14 a result of the transmission of information from
15 DHS to CPS, financial information?

16 A. That's correct.

17 Q. Now, we have an actual exhibit, that
18 transfer -- or I mean that notice, excuse me. Let
19 me look for it just a moment.

20 We -- at least we did at one point. Let
21 me look one more time.

22 And I'd like to refer you to Exhibit 10.
23 I'm not going to dwell on every part of this
24 Exhibit 10, because I think it speaks for itself.
25 But Exhibit 10 begins with a November 8, 2017,

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1 2:11 p.m., e-mail from Richard Ferrell to
2 Bridgette Bell?

3 A. Yes, sir.

4 Q. Those are both employees in the
5 financial arm of DHS?

6 A. That's correct.

7 Q. Now, it ends -- well, it moves forward
8 to November 15th, some number of days later, with
9 a Richard Ferrell to Bridgette Bell subsequent
10 e-mail at 1:27 p.m., does it not?

11 A. Yes.

12 Q. And let me just ask you if I am reading
13 this correctly. According to the MAGIC budget
14 versus commitments table this morning, CPS had
15 \$46,303,000 -- 303,954.84 of expenditures and
16 1,688,397.59 of commitments.

17 Did I read that correctly?

18 A. That's correct.

19 Q. This results in an allotment balance of
20 992,309.07?

21 A. Correct.

22 Q. That was all that was remaining in the
23 allotment account, so to speak, wasn't it, at that
24 point?

25 A. Yes.

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1 Q. And we were at November 15th of 2017?
2 A. Correct.
3 Q. The allotment is intended, is it not,
4 sir, to cover expenses through the end of December
5 of each calendar year?

6 A. Yes.

7 Q. He also noted that according to MAGIC,
8 there were additional obligations of \$2,704,869 at
9 that time?

10 A. Yes, that's what it says.

11 Q. I'll just ask you to assume this,
12 because the document reflects it, but CPS's
13 expenses at that time were running somewhere in
14 the 11, 12, \$13 million a month range?

15 A. Approximately, yes.

16 Q. Based on your experience with the
17 agency, CPS was going to run out of its allotment
18 before December 31st, was it not, sir?

19 A. Absolutely.

20 Q. All right. And the -- if that
21 expenditure pattern continued, it was potentially
22 facing a very significant shortfall for fiscal
23 year '18?

24 A. If we would have stayed on that course,
25 yes.

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1 Q. Now, let me just ask you globally the
2 factors that led to that development.

3 First of all, one factor is the
4 legislation requiring a complete separation?

5 A. Yes, because it created a -- it created
6 additional expenses to be incurred because we were
7 having to hire additional staff to separate out
8 and -- and then staff both departments.

9 Q. Sir, was that complete separation being
10 advocated by the plaintiffs in this case?

11 A. To my knowledge, yes.

12 Q. Okay. Now, a second factor that led to
13 this potential shortfall was increased
14 expenditures for programs and other services
15 during this period of time?

16 A. Yes. The cost to separate out even
17 equipment was causing a tremendous amount of drain
18 on the budget.

19 Q. And the -- the sheer fact of separation,
20 the movement of people, the duplication of
21 services, and the increased services being
22 provided by CPS were also factors, were they not?

23 A. Even space allocation. Space became an
24 issue, the cost of additional space needed.

25 Q. All right. Now, all those factors were

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1 in place before Commissioner Dickinson assumed his
2 position on September 18th of 2017, were they not,
3 sir?

4 A. It started -- it started immediately
5 after the legislation to separate.

6 Q. Now, and the impact of the separation in
7 terms of not allowing your agency to manage TANF
8 funds for the benefit of CPS was also a major
9 factor?

10 A. Very much so, and nobody recognized that
11 until it was -- until the legislation had passed.
12 We had -- I had brought that to the attention of
13 how are we going to use TANF funds for an agency
14 that would no longer be in our agency. We cannot
15 use it outside of our agency.

16 Q. Now, ultimately this financial crisis
17 shortfall was addressed by -- in cooperation by
18 DHS, by CPS, by the governor's office and others,
19 was it not?

20 A. Yes.

21 Q. And let me just ask you if this is the
22 bottom line. DHS was able to make available
23 sufficient funds together with a deficit
24 appropriation of \$12 million to prevent a
25 shortfall?

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1 A. That's correct.

2 Q. For fiscal year 2018?

3 A. By finding those expenditures that met
4 the TANF requirements, because we had not been
5 completely separated out at that point.

6 Q. Okay. And that was a reasonable
7 response to the fiscal year '18 budget crisis, was
8 it not, sir?

9 A. It was the right -- it was the only
10 response we could do. It was -- it was what we
11 would do normally.

12 Q. Okay. And I think I've asked this
13 question of another witness. Do you believe CPS's
14 management team under Commissioner Dickinson
15 should be applauded or -- maybe that's the wrong
16 word, not applauded -- but at least recognized for
17 the significant efforts it made to solve that very
18 serious budget crisis?

19 A. That team came in with a lack of
20 institutional knowledge and has, over these few
21 months, taken the opportunity to educate
22 themselves and understand better. So we no longer
23 talk in terms of just transferring money over. We
24 talk in terms of how do we do this within the
25 guidelines of the federal programs.

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1 And so yes, "applaud" may not be the
2 right word, but yes, absolutely.

3 Q. "Applaud" is not the right word.

4 A. They're learning the difference in
5 running something in the private world and running
6 something in the world that we live in.

7 Q. And that's a transition that virtually
8 every administration has moving into the child
9 welfare field, isn't it, sir?

10 A. It's not just child welfare, it's every
11 part of our agency, the Department of Human
12 Services.

13 Q. You've been in human services 28 years?

14 A. 27 in June.

15 MR. JONES: Okay. That's all I have.

16 MS. LOWRY: I have one question -- we'll
17 be right back.

18 (A short break was taken.)

19 Q. (By Ms. Lowry) Mr. Davis, you were
20 asked was that complete separation, and you were
21 referring to the separation of MDHS and CPS, was
22 that complete separation being advocated by the
23 plaintiffs in this case, and you responded, to my
24 knowledge, yes.

25 What did you base -- what specific

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1 knowledge did you base that statement on?

2 A. Based on the historical knowledge of
3 anyone in the agency knowing that it was the
4 desire to have child protection services as a
5 separate division or department and not under the
6 purview or under the watch of human services.

7 Q. But I'm asking you specifically about
8 plaintiff's position on that. What specifically
9 did you know about the fact that it was advocated
10 by the plaintiffs in this case?

11 A. Just based on what I was told.

12 Q. By whom?

13 A. By the former executive director, by the
14 former deputy executive director, and just being
15 in the agency.

16 Q. Okay. So rumor had it, basically?

17 A. Well, it wasn't "rumor had it." We had
18 staff meetings about it.

19 Q. And the fact the plaintiffs were
20 advocating for it?

21 A. Absolutely, that it needed to be
22 separated completely.

23 Q. Okay. And then, secondly, you said
24 that -- I think I was confused about your
25 testimony about whether or not you could make TANF

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1 funds available during the '17-'18 fiscal year,
2 and I think you testified that you couldn't make
3 funds available, but in fact, the complete
4 separation was not going to take place until the
5 beginning of the '19 fiscal year; isn't that
6 right?

7 A. I did not say I couldn't. I said I
8 didn't because it wasn't budgeted.

9 Q. Right. That's what I think you were
10 saying.

11 A. Yes.

12 Q. But because it wasn't budgeted, you
13 didn't make it available?

14 A. Absolutely not, because we --

15 MS. LOWRY: Okay. Fine. We have no
16 further questions.

17 (Time Noted: 10:39 a.m.)

18 SIGNATURE/NOT WAIVED

19

20 ORIGINAL: MARCIA ROBINSON LOWRY, ESQ.

21 COPY: J. LAWRENCE JONES, ESQ.

22

23

24

25

John Davis 11/29/2018

1 CERTIFICATE OF DEPONENT
2 DEPONENT: JOHN DAVIS
3 DATE: November 29, 2018
4 CASE STYLE: OLIVIA Y., ET AL. vs. PHIL BRYANT, ET
AL.

5 ORIGINAL TO: MARCIA ROBINSON LOWRY, ESQ.

6 I, the above-named deponent in the
7 deposition taken in the herein styled and numbered
8 cause, certify that I have examined the deposition
9 taken on the date above as to the correctness
thereof, and that after reading said pages, I find
them to contain a full and true transcript of the
testimony as given by me.

10 Subject to those corrections listed
11 below, if any, I find the transcript to be the
12 correct testimony I gave at the aforesated time
13 and place.

14	Page	Line	Comments
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26 This the _____ day of _____, 2018.

27 JOHN DAVIS

28 State of Mississippi
29 County of _____

30 Subscribed and sworn to before me, this the
31 day of _____, 2018.

32 My Commission Expires:

33 _____
34 _____
35 Notary Public

John Davis 11/29/2018

1 CERTIFICATE OF COURT REPORTER
2 I, Ginger H. Brooks, Court Reporter and
3 Notary Public, in and for the State of
4 Mississippi, hereby certify that the foregoing
5 contains a true and correct transcript of the
6 testimony of JOHN DAVIS, as taken by me in the
7 aforementioned matter at the time and place
8 heretofore stated, as taken by stenotype and later
9 reduced to typewritten form under my supervision
10 by means of computer-aided transcription.

11 I further certify that under the
12 authority vested in me by the State of Mississippi
13 that the witness was placed under oath by me to
14 truthfully answer all questions in the matter.

15 I further certify that, to the best of
16 my knowledge, I am not in the employ of or related
17 to any party in this matter and have no interest,
18 monetary or otherwise, in the final outcome of
19 this matter.

20 Witness my signature and seal this the
21 10th day of December, 2018.

22

23

24 My Commission Expires:
25 September 18, 2021


GINGER H. BROOKS, #1165
CRR, RPR, CCR